

CLAIMS RESOLUTION TRIBUNAL

In re Holocaust Victim Assets Litigation
Case No. CV96-4849

Certified Award

to Claimant [REDACTED]

in re Accounts of *Bernhard Mandelbaum & Sohn*

Claim Number: 209966/PY

Award Amount: 51,360.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the account of Bernhard Mandelbaum.¹ This Award is to the accounts of *Bernhard Mandelbaum & Sohn* (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as a factory business located in Vienna, Austria that was owned by her paternal grandfather, Bernhard Mandelbaum. The Claimant stated that her grandfather’s factory manufactured metal products. The Claimant stated that her grandfather, who was Jewish, was born in Krakow, Poland, was married to [REDACTED], and died in an industrial accident in 1937. The Claimant further stated that Bernhard Mandelbaum’s sons, [REDACTED] (the Claimant’s father) and [REDACTED] (the Claimant’s uncle, who later changed his name to [REDACTED]) were also Jewish and fled to the United States in 1940 to avoid Nazi persecution. The Claimant stated that her parents were “very prosperous people in Vienna” and that they owned bank accounts and property. The Claimant also stated that all their property was stolen during the *Kristallnacht* (“Night of Broken Glass”) pogrom. The Claimant stated that [REDACTED] died in 1997 in New York, New York, the United States, and that [REDACTED] died in 1999 in Miami Beach, Florida, the United States.

The Claimant indicated that she was born on 3 March 1936 in Vienna and emigrated to the United States in 1941.

¹ The CRT will treat the claim to this account in a separate decision.

Information Available in the Bank Records

The bank records consist of a customer card and printouts from the Bank's database. According to these records, the Account Owner was *Bernhard Mandelbaum & Sohn*, a company located at Thelemangasse 8, Vienna XVII, Austria. The bank records indicate that the Account Owner held two demand deposit accounts numbered 13074 and 21417.

The demand deposit account numbered 13074 was closed on 1 June 1939. The amount in the account on the date of its closure was 80.30 Swiss Francs. The demand deposit account numbered 21417 was closed on 21 October 1941. The amount in the account on the date of its closure is unknown. The bank records do not show who closed the accounts. There is no evidence in the bank records that the Account Owner or its owner's heirs closed the account and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of [REDACTED], one of Bernhard Mandelbaum's sons, who is the Claimant's paternal uncle. These records consist of an Austrian census form for [REDACTED], numbered 38504, which is dated 13 July 1938. These records indicate that [REDACTED] was Jewish, that he was born on 25 June 1898, and that he was married to [REDACTED], née [REDACTED]. The records show that [REDACTED] resided at Thelemangasse 8, Vienna XVII, and that he owned a metal products factory by the name of *Bernhard Mandelbaum & Sohn*, situated at Thelemanngasse 4, Vienna XVII. The Austrian census records indicate that *Bernhard Mandelbaum & Sohn* was valued at 56,813.00 Reichsmarks (1938 value) and that it had a demand deposit account at the Bank, which had a balance of 323.65 Swiss Francs at the time the Austrian census form was completed.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The name and location of her grandfather's factory match the published name and location of the company that owned the account. The Claimant provided information about her father's brother, [REDACTED], and she stated that *Bernhard Mandelbaum & Sohn* produced metal products, which matches information contained in the Austrian State Archives. The CRT notes that there was one other claim to this account that was disconfirmed because the claimant provided the wrong country of residence for the Account Owner.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the sons of the owner of the Account Owner were Victims of Nazi Persecution. The records of the Austrian State Archives indicated that [REDACTED] was an owner of the Account Owner, and the Claimant stated that [REDACTED] was Jewish and was forced to flee to the United States with his brother [REDACTED] in 1940 in order to escape the Nazis.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to Bernhard and [REDACTED] Mandelbaum, who were both owners of the Account Owner.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and the application of Presumptions (a), (d), and (j) as provided in Article 28 (see Appendix A) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), the CRT concludes that it is plausible that the account proceeds in this case were not paid to the Account Owner, its owners, or their heirs or successors in interest. Based on its precedent and the Rules, the CRT applies presumptions to assist in determining whether or not account owners or their heirs received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that her grandfather and uncle were owners of the Account Owner, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that the Account Owner, its owners, their heirs, and their successors in interest did not receive the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held two demand deposit accounts. According to Article 29 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The total 1945 value for the two demand deposit accounts is therefore 4,280.00 Swiss Francs. The present value of this amount is determined by multiplying the balance as determined by Article 29 by a factor of 12, in accordance with Article 31(1) of the Rules. Consequently, the total award amount in this case is 51,360.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on her claim to determine whether there are additional Swiss bank accounts to which she might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

Certification of the Award

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal
March 11, 2003

APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:¹

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;²
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.³

¹ See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); *see also* Independent Committee

of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999) (hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

² See Bergier Final Report at 443-44, 446-49; see also ICEP Report at 81-83.

³ As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, see Albers v. Credit Suisse, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, see Bergier Final Report at 450 -51, and possibly Romania as well, see Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. See Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." Id. at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. See In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).